

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

NICHOLAS DYKES,

v.

Plaintiff,

NAPH CARE MEDICAL  
BILLING, et al.,

Case No. 3:20-cv-00312-MMD-WGC

ORDER

Defendants.

Pro Se Plaintiff Nicholas Dykes, who is incarcerated in the custody of the Nevada Department of Corrections (“NDOC”), has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 (“Complaint”) and has filed an application to proceed *in forma pauperis*. (ECF Nos. 1, 1-1.) Based on the information regarding Plaintiff’s financial status, the Court finds that Plaintiff is not able to pay an initial installment payment toward the full filing fee pursuant to 28 U.S.C. § 1915. Plaintiff will, however, be required to make monthly payments toward the full \$350.00 filing fee when he has funds available. The Court now screens Plaintiff’s Complaint pursuant to 28 U.S.C. § 1915A.

**I. SCREENING STANDARD**

Federal courts must conduct a preliminary screening in any case in which an incarcerated person seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. See *id.* §§ 1915A(b)(1), (2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the

1 violation of a right secured by the Constitution or laws of the United States, and (2) that  
2 the alleged violation was committed by a person acting under color of state law. See *West*  
3 *v. Atkins*, 487 U.S. 42, 48 (1988).

4 In addition to the screening requirements under § 1915A, pursuant to the Prison  
5 Litigation Reform Act (“PLRA”), a federal court must dismiss an incarcerated person’s  
6 claim if “the allegation of poverty is untrue” or if the action “is frivolous or malicious, fails  
7 to state a claim on which relief may be granted, or seeks monetary relief against a  
8 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2). Dismissal of a  
9 complaint for failure to state a claim upon which relief can be granted is provided for in  
10 Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under  
11 § 1915 when reviewing the adequacy of a complaint or an amended complaint. When a  
12 court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend  
13 the complaint with directions as to curing its deficiencies, unless it is clear from the face of  
14 the complaint that the deficiencies could not be cured by amendment. See *Cato v. United*  
15 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

16 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See  
17 *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to  
18 state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in  
19 support of the claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d  
20 756, 759 (9th Cir. 1999). In making this determination, the court takes as true all  
21 allegations of material fact stated in the complaint, and the court construes them in the  
22 light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th  
23 Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than  
24 formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While  
25 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff  
26 must provide more than mere labels and conclusions. *Bell Atl. Corp. v. Twombly*, 550 U.S.  
27 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient.  
28 *Id.*

1           Additionally, a reviewing court should “begin by identifying pleadings [allegations]  
 2 that, because they are no more than mere conclusions, are not entitled to the assumption  
 3 of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide  
 4 the framework of a complaint, they must be supported with factual allegations.” *Id.* “When  
 5 there are well-pleaded factual allegations, a court should assume their veracity and then  
 6 determine whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining  
 7 whether a complaint states a plausible claim for relief . . . [is] a context-specific task that  
 8 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

9           Finally, all or part of a complaint filed by an incarcerated person may therefore be  
 10 dismissed *sua sponte* if that person’s claims lack an arguable basis either in law or in fact.  
 11 This includes claims based on legal conclusions that are untenable (e.g., claims against  
 12 defendants who are immune from suit or claims of infringement of a legal interest which  
 13 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,  
 14 fantastic or delusional scenarios). See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989);  
 15 see also *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

## 16       **II. SCREENING OF COMPLAINT**

17           In the Complaint, Plaintiff sues multiple Defendants for events that took place while  
 18 he was in the custody of the Washoe County Jail. (ECF No. 1-1 at 1.) Plaintiff sues Naph  
 19 Care, Inc, Naph Care Medical Billing, Washoe County Staff, Washoe County Jail Med,  
 20 Washoe County Sheriff’s Office, Washoe County Health Inspector, and Washoe County  
 21 Health Department.<sup>1</sup> (*Id.* at 1-3.) Plaintiff alleges three counts and seeks injunctive relief  
 22 and monetary relief. (*Id.* at 6, 9.)

### 23       **A. Washoe County Jail Staff**

24           A defendant is liable under 42 U.S.C. § 1983 “only upon a showing of personal  
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26           <sup>1</sup>The Defendants Plaintiff lists in the caption do not match the Defendants Plaintiff  
 27 wrote in the spaces provided in the form for plaintiffs to fill in the names of Defendants.  
 28 (ECF No. 1-1 at 1-3.) If Plaintiff chooses to amend his complaint, the amended complaint  
 should not list Defendants in the caption that are not named as Defendants within the  
 complaint form.

1 participation by the defendant.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).  
2 “Because vicarious liability is inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead  
3 that each Government-official defendant, through the official’s own individual actions, has  
4 violated the Constitution.” *Iqbal*, 556 U.S. at 676. Therefore, “Washoe County Jail Staff”  
5 cannot be held liable as a collective unit.

6 Furthermore, as a general rule, allegations against unnamed or “Doe” individuals  
7 are not favored. *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). However, the Court  
8 recognizes that there are situations “where the identity of alleged defendants will not be  
9 known prior to the filing of a complaint.” *Id.* Therefore, if a plaintiff adequately describes a  
10 Doe defendant so that the identity of that particular person can be identified through  
11 discovery *and* if the plaintiff alleges specific acts by that particular Doe defendant that  
12 states a colorable claim against that Doe defendant, then the Court later will permit the  
13 plaintiff to engage in discovery to attempt to learn the name of that particular Doe  
14 defendant. *Id.* at 642-43. A complaint cannot be served on a Doe defendant. Therefore,  
15 once a plaintiff learns the identity of the Doe defendant, the plaintiff would have to move  
16 to substitute the person’s real name. A case cannot proceed without a named defendant  
17 being served.

18 Here, Plaintiff collectively sues staff. This is insufficient to state a claim against a  
19 Doe defendant. If Plaintiff wishes to pursue a claim against a particular staff member, he  
20 must sue each particular person and state a claim against that particular person. If Plaintiff  
21 does not know that person’s name, he must adequately describe that particular person  
22 and state a claim against that particular person.

23 **B. Count 1**

24 Plaintiff alleges the following in Count 1. On April 9, 2020, Unit 8 of the Reno County  
25 Jail became flooded. (ECF No. 1-1 at 4.) Officer Renville turned off the water to all cells  
26 for 20 to 30 minutes while the flood water was cleaned up. (*Id.*) Plaintiff was without water  
27 during this time. (*Id.*) When Officer Renville turned the water back on, dark brown water  
28 came out of the sink. (*Id.*) Plaintiff immediately got the officer’s attention. (*Id.*) The officer

1 saw the brown water and told Plaintiff to let the water run. (*Id.*) The officer did not care  
2 about Plaintiff's health. (*Id.*) One day later, Plaintiff became sick from drinking the water  
3 and had headaches, stomach aches, and diarrhea. (*Id.*) Plaintiff wrote medical kites, but  
4 it took 7 days to be seen and "they" charged him. (*Id.*) Based on this alleged conduct,  
5 Plaintiff alleges that his Eighth Amendment rights were violated. (*Id.*)

6 A pretrial detainee is protected from conditions constituting punishment under the  
7 Due Process Clause of the Fourteenth Amendment, not the Eighth Amendment Cruel and  
8 Unusual Punishment Clause. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1971). Because it  
9 appears that Plaintiff is a pre-trial detainee, the Court construes the allegations as  
10 Fourteenth Amendment due process claims against the Washoe County Sheriff's  
11 Department and "Washoe County Jail Med."

12 A pretrial detainee states a Fourteenth Amendment conditions of confinement claim  
13 against an official if: (1) the defendant made an intentional decision with respect to the  
14 conditions under which the pretrial detainee was confined; (2) those conditions put the  
15 pretrial detainee at substantial risk of suffering serious harm; (3) the defendant did not  
16 take reasonable available measures to abate that risk, even though a reasonable officer  
17 in the circumstances would have appreciated the high degree of risk involved—making  
18 the consequences of the defendant's conduct obvious; and (4) by not taking such  
19 measures, the defendant caused the pretrial detainee's injuries. *Castro v. Cty. of Los*  
20 *Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016); see also *Gordon v. Cty. of Orange*, 888  
21 F.3d 1118, 1124–25 (9th Cir. 2018). With respect to the third element, the defendant's  
22 conduct must be objectively unreasonable, a determination that turns on the facts and  
23 circumstances of each particular case. *Id.*

24 However, a public agency is not a person or entity subject to suit unless that agency  
25 is a separate legal entity. *Hervey v. Estes*, 65 F.3d 784, 791–92 (9th Cir. 1995). Pursuant  
26 to Federal Rule of Civil Procedure 17(b), the Ninth Circuit has held that state law  
27 determines the issue of whether a department of a municipality may sue or be sued. See,  
28 e.g., *Streit v. County of Los Angeles*, 236 F.3d 552, 565 (9th Cir. 2001). In Nevada, each

1 city and county are political subdivisions of the state and independent legal entities, which  
2 means each city and county can sue or be sued. *Clark County v. Lewis*, 498 P.2d 363,  
3 365 (Nev. 1972); NRS 41.031(2). Here, however, Plaintiff has not sued Washoe County.  
4 He has sued the Washoe County Sheriff's Office and "Washoe County Jail Med." The  
5 Washoe County Sheriff's Office and its medical department may not be sued. See *Orth v.*  
6 *Balaam*, No. 3:06-CV-0481-LRH RAM, 2011 WL 1561423, at \*5–6 (D. Nev. Feb. 4,  
7 2011), *report and recommendation adopted*, No. 3:06-CV-00481-LRH, 2011 WL 1558678  
8 (D. Nev. Apr. 25, 2011), *aff'd*, 528 F. App'x 723 (9th Cir. 2013). The Court therefore  
9 dismisses the claims against the Washoe County Sheriff's Office and the "Washoe County  
10 Jail Med" with prejudice, as amendment would be futile.

11 If Plaintiff wishes to file an amended complaint against Washoe County, he must  
12 name Washoe County as a defendant and state a colorable due process claim against  
13 Washoe County based on a theory of municipal liability. A municipality may not be held  
14 liable under § 1983 on a *respondeat superior* theory, which means that a municipality may  
15 not be held liable merely because its employees have violated someone's civil rights.  
16 *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690–91 (1978).  
17 Municipalities may not be held liable under § 1983 unless action pursuant to municipal  
18 custom or policy caused a constitutional tort. *Id.* There must be a deliberate custom or  
19 policy, and that custom or policy must cause the alleged constitutional deprivation. *Castro*,  
20 833 F.3d at 1075. Furthermore, the plaintiff must also show that the custom or policy was  
21 adhered to with deliberate indifference to the prisoners' constitutional rights. *Id.* at 1076.  
22 The deliberate indifference standard for municipalities is an objective inquiry into whether  
23 the facts available to the municipal policymakers put them on constructive notice that the  
24 particular conduct or omission is substantially certain to result in the violation of  
25 constitutional rights. *Id.*

26 Merely including a conclusory allegation that there is a custom or policy is  
27 insufficient. *Iqbal*, 556 U.S. at 680–81. For example, a plaintiff must go beyond bare  
28 assertions and plead facts sufficient to show that there is a policy and what the policy is.

1       *Id.* at 678–81. In order to adequately allege a custom, a plaintiff must allege facts sufficient  
2 to show a longstanding practice that constitutes the standard operating procedure of the  
3 local government entity. See *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996).  
4 “The custom must be so ‘persistent and widespread’ that it constitutes a permanent and  
5 well settled city policy.” *Id.* (quoting *Monell*, 436 U.S. at 691). “Liability for  
6 improper custom may not be predicated on isolated or sporadic incidents; it must be  
7 founded upon practices of sufficient duration, frequency and consistency that the conduct  
8 has become a traditional method of carrying out policy.” *Id.*

9              If Plaintiff does not believe that he can prove a municipal claim against Washoe  
10 County, but he believes that he can prove a conditions of confinement claim against an  
11 individual person at the Washoe County Sheriff’s Department, then he must sue that  
12 particular person and he must allege facts sufficient to show that the particular person  
13 violated his Fourteenth Amendment rights.

14              **C. Count 2**

15              Plaintiff alleges the following in Count 2. During the COVID-19 pandemic, Donald  
16 Trump granted relief for rent, health care, unemployment, and various financial strains to  
17 United States citizens and non-citizens. (ECF No. 1-1 at 5.) Plaintiff, a citizen of the United  
18 States, has been denied these same rights that all American citizens are being granted.  
19 (*Id.*) Being incarcerated should not exclude Plaintiff from receiving financial relief. (*Id.*)  
20 During this period, inmates are being charged by the Washoe County Sheriff’s Office for  
21 food, clothing, and room and board while being incarcerated at the Washoe County Jail.  
22 (*Id.*) Plaintiff does not understand why inmates are being charged for health care and  
23 medical. (*Id.*) People incarcerated at the Washoe County jail are not in a position to  
24 maintain financial stability from jail. (*Id.*) Overcharging them is “hypothetical.” (*Id.*) Plaintiff  
25 asserts that he is not in a position to be financially stable because of the COVID-19  
26 pandemic. (*Id.*) Plaintiff does not identify what particular civil right was violated, stating  
27 instead that he seeks relief from being charged for medical services as he is an inmate.  
28 (*Id.*)

1 Plaintiff appears to be alleging a Fourteenth Amendment equal protection claim  
 2 based on allegations that there are Americans who are receiving some government  
 3 benefits to address issues related to the COVID-19 epidemic but inmates such as Plaintiff  
 4 are not.<sup>2</sup> However, Plaintiff does not allege how any of the Defendants in this action are  
 5 responsible for a federal policy that treats prisoners and non-prisoners differently.  
 6 Furthermore, Plaintiff cannot state a colorable equal protection claim based on allegations  
 7 of differential treatment between prisoners and non-prisoners. Prisoners are not a suspect  
 8 class for purposes of the Fourteenth Amendment's Equal Protection Clause. *Glauner v.*  
 9 *Miller*, 184 F.3d 1053, 1054 (9th Cir. 1999); *Rodriguez v. Cook*, 169 F.3d 1176, 1179 (9th  
 10 Cir. 1999). For a person who is not a member of a suspect class to state a colorable equal  
 11 protection claim, the plaintiff must allege facts sufficient to show that he is similarly situated  
 12 to others, but the defendant irrationally singled the plaintiff out for different treatment. *Vill.*  
 13 *of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). Inmates generally are not similarly  
 14 situated to non-inmates. See *Parks v. Chappell*, No. C-13-4048 EMC (PR), 2014 WL  
 15 2811114, at \*2 (N.D. Cal. June 20, 2014); *Levingston v. Plummer*, No. C 94-4020 VRW,  
 16 1995 WL 23945, at \*1 (N.D. Cal. Jan. 9, 1995). For example, the reason Plaintiff cannot  
 17 currently obtain a job in the community is because he is incarcerated. Plaintiff therefore  
 18 does not and cannot state a colorable equal protection claim. Accordingly, the Court  
 19 dismisses the equal protection claim with prejudice, as amendment would be futile.

20           **D. Count 3**

21           In Count III Plaintiff alleges the following. At the Washoe County Jail, inmates were  
 22 briefed by the captain at the end of March and were told that the COVID-19 virus was not  
 23 in the facility. (ECF No. 1-1 at 6.) In April, a staff member was on the news about having  
 24 COVID-19. (*Id.*) During that time, staff was not wearing masks or gloves when they came  
 25 in contact with inmates. (*Id.*) On May 4, 2020, Plaintiff started to notice bio-hazard bags

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 27           <sup>2</sup>To the extent Plaintiff is alleging that it is cruel and unusual punishment merely for  
 28 a Defendant to charge him a fee for health services that the Defendant has provided to  
 Plaintiff, he does not and cannot state a colorable claim. See *Shapley v. Nevada Bd. of  
 State Prison Comm'r's*, 766 F.2d 404, 408 (9th Cir. 1985).

1 containing property belonging to inmates housed in his unit. (*Id.*) "Washoe County or  
2 Nevada" is not giving inmates testing unless the person is showing symptoms of the virus.  
3 (*Id.*) Plaintiff has seen very few staff wearing masks or "hepa" filters. (*Id.*) Plaintiff is being  
4 housed with people who have the potential to infect him. (*Id.*) Plaintiff feels unsafe in a  
5 place where he is supposed to feel safe, and he is scared of being infected by others. (*Id.*)  
6 Plaintiff does not identify which constitutional right he believes is being violated but  
7 concludes that he is being given false information or no information about COVID-19  
8 testing at Washoe County Jails and being forced to be exposed to COVID-19. (*Id.*)

9           The Court construes the allegations as a Fourteenth Amendment due process  
10 claim based on conditions of confinement. For a discussion of the relevant legal standards  
11 concerning such claims, see *supra* Section II.B.

12 The Court finds that Plaintiff fails to state a colorable due process claim against any  
13 of the named Defendants. Merely being given false information is not a constitutional  
14 violation. Furthermore, although Plaintiff alleges that “Washoe County or Nevada” is not  
15 testing asymptomatic inmates, he has not sued either Washoe County or the State of  
16 Nevada.<sup>3</sup> He also has not alleged facts sufficient to show a policy concerning gloves,  
17 masks, or testing. More importantly, he has not alleged facts sufficient to show that any  
18 named Defendant has participated in the violation of Plaintiff’s Fourteenth Amendment  
19 rights. The Court therefore dismisses this count without prejudice and with leave to amend.

If Plaintiff amends this claim, he must sue the proper defendant. If he chooses to sue Washoe County, he must allege *facts* sufficient to establish a municipal theory of liability for the violation of his Fourteenth Amendment rights.

23 The Court notes that Plaintiff has not alleged that he has contracted the virus as a  
24 result of any policy or conduct concerning gloves, masks, or testing, so he cannot establish  
25 liability for compensatory damages under *Castro*, 833 F.3d at 1071. However, concern

<sup>27</sup> The state of Nevada is not subject to suit in a § 1983 action. See *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 65 (1989) (holding that states are not persons subject to suit for purposes of § 1983).

about the health of a person in state custody is not limited to situations in which a prisoner already has been harmed. See *Helling v. McKinney*, 509 U.S. 25, 33, 35 (1993) (recognizing that prison officials may be considered deliberately indifferent to the exposure of inmates to a serious, communicable disease even if the complaining inmate shows no serious current symptoms, and noting that prison officials may not “ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year”); see also *Farmer v. Brennan*, 511 U.S. 825, 847 (1994) (recognizing that one does not have to await the consummation of threatened injury to obtain preventive relief for deliberate indifference to unsafe conditions). In the Eighth Amendment context, the Supreme Court has held that a prisoner who is not currently suffering from serious medical needs may state a claim by alleging facts sufficient to show that defendants are, with deliberate indifference, exposing him to conditions that pose an unreasonable risk of serious damage to his *future* health. *Helling*, 509 U.S. at 35. Thus, in the context of a pretrial detainee, the issues are whether the defendant made a deliberate decision regarding the plaintiff’s conditions of confinement and whether the defendant is failing to take reasonable available measures to abate a substantial risk of serious harm even though a reasonable official in the circumstances would appreciate the high degree of risk involved. If the court finds that a defendant is being deliberately indifferent to an ongoing significant risk of serious harm to future health, it may grant appropriate injunctive relief tailored to the violation. *Farmer*, 511 U.S. at 846.

Thus, if Plaintiff chooses to amend this count, he must keep in mind the legal standards concerning municipal liability, policies, and claims concerning ongoing Fourteenth Amendment conditions of confinement violations, and he must alleged facts sufficient to state a claim against a defendant he sues in the amended complaint.

#### 25           **E.     Leave to Amend**

Plaintiff is granted leave to file an amended complaint to cure the deficiencies of the Complaint. If Plaintiff chooses to file an amended complaint, he is advised that an amended complaint supersedes (replaces) the original complaint and, thus, the amended

1 complaint must be complete in itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the original complaint is irrelevant; an amended pleading supersedes the original”); see 2 also *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims 3 dismissed with prejudice, a plaintiff is not required to reallege such claims in a subsequent 4 amended complaint to preserve them for appeal). Plaintiff should file the amended 5 complaint on this Court’s approved prisoner civil rights form, and it must be entitled “First 6 Amended Complaint.” For each cause of action and *each* Defendant, he must allege facts 7 sufficient to show that the *particular* defendant violated Plaintiff’s civil rights. The Court 8 notes that, if Plaintiff chooses to file an amended complaint curing the deficiencies, as 9 outlined in this order, Plaintiff must file the amended complaint within 30 days from the 10 date of entry of this order. If Plaintiff does not timely file an amended complaint curing the 11 stated deficiencies, this action will be dismissed with prejudice for failure to state a claim. 12

13 **III. CONCLUSION**

14 It is therefore ordered that Plaintiff’s application to proceed *in forma pauperis* (ECF 15 No. 1) without having to prepay the full filing fee is granted. Plaintiff will not be required to 16 pay an initial installment fee. Nevertheless, the full filing fee will still be due, pursuant to 17 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act. The movant herein 18 is permitted to maintain this action to conclusion without the necessity of prepayment of 19 fees or costs or the giving of security therefor. This order granting *in forma pauperis* status 20 will not extend to the issuance and/or service of subpoenas at government expense. 21

22 It is further ordered that, pursuant to 28 U.S.C. § 1915(b)(2), the Clark County 23 Detention Center will pay to the Clerk of the United States District Court, District of 24 Nevada, 20% of the preceding month’s deposits to the account of Nicholas Dykes, # 25 2002884 (in months that the account exceeds \$10.00) until the full \$350.00 filing fee has 26 been paid for this action. If Plaintiff should be transferred and become under the care of 27 the Nevada Department of Corrections, the Washoe County Detention Center Accounting 28 Supervisor is directed to send a copy of this order to the attention of the Chief of Inmate

1 Services for the Nevada Department of Corrections, P.O. Box 7011, Carson City, NV  
2 89702, indicating the amount that Plaintiff has paid toward his filing fee, so that funds may  
3 continue to be deducted from Plaintiff's account. The Clerk will send a copy of this order  
4 to the Washoe County Detention Facility Accounting Supervisor, 911 Parr Blvd., Reno,  
5 NV 89512.

6 It is further ordered that, even if this action is dismissed, or is otherwise  
7 unsuccessful, the full filing fee will still be due, pursuant to 28 U.S.C. §1915, as amended  
8 by the Prisoner Litigation Reform Act.

9 It is further ordered that the Clerk of the Court will file the Complaint (ECF No. 1-1)  
10 and will send Plaintiff a courtesy copy of the Complaint.

11 It is further ordered that the counts against the Washoe County Sheriff's Office and  
12 Washoe County Jail Med are dismissed with prejudice, as amendment would be futile.

13 It is further ordered that Counts 1 and 3 are dismissed without prejudice, with leave  
14 to amend.

15 It is further ordered that Count 2 is dismissed with prejudice, as amendment would  
16 be futile.

17 It is further ordered that, if Plaintiff chooses to file an amended complaint curing the  
18 deficiencies of his Complaint, as outlined in this order, Plaintiff will file the amended  
19 complaint within 30 days from the date of entry of this order.

20 It is further ordered that the Clerk of the Court will send to Plaintiff the approved  
21 form for filing a § 1983 complaint and instructions for the same. If Plaintiff chooses to file  
22 an amended complaint, he should use the approved form and he must write the words  
23 "First Amended" above the words "Civil Rights Complaint" in the caption.

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1 It is further ordered that, if Plaintiff fails to file a timely amended complaint curing  
2 the stated deficiencies of the Complaint, this action will be dismissed with prejudice for  
3 failure to state a claim.

4 DATED THIS 3<sup>rd</sup> day of June 2020.

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CHIEF UNITED STATES DISTRICT JUDGE  
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